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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/570,015	09/28/2006	Yuji Ishino	P/5495-5	5306
2352 7590 11/09/2010 OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403				
EXAMINER				
O HERN, BRENT T				
ART UNIT		PAPER NUMBER		
1783				
MAIL DATE		DELIVERY MODE		
11/09/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/570,015

Applicant(s)

ISHINO ET AL.

Examiner

BRENT T. O'HERN

Art Unit

1783

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 November 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-3.
Claim(s) withdrawn from consideration: 5-9.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/BRENT T O'HERN/
Examiner, Art Unit 1783

Continuation of 3. NOTE: The amendment filed 11/4/2010 includes new independent claim 10 which has numerous limitations that previously were not considered and raises new issues that require further consideration and search and does not reduce or simplify the issues for appeal..

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments (See pp. 7-10 of Applicant's Paper filed 11/4/2010.) have been fully considered. Further consideration/search is required to determine whether the claims are allowable.

The amendments to the claims overcome all objections and 35 USC 112 rejections, however, the amendment is not entered as further consideration/search is required.

Applicant's arguments regarding cancelled claim 1 are moot as said claim has been deleted. New claim 10 has a significantly different scope than claim 1.

In response to Applicant's arguments (See p. 7, paras. 1-4 of Applicant's Paper filed 11/4/2010.) regarding the objections and 35 USC 112 rejections, it is noted that the amendments are persuasive in overcoming said objections and rejections.

In response to Applicant's arguments (See p. 7, paras. 6-7 of Applicant's Paper filed 11/4/2010.) regarding the double patenting rejections, it is noted that no precise arguments are set forth regarding the merits of the rejections.

In response to Applicant's arguments (See p. 7, para. 8 of Applicant's Paper filed 11/4/2010.) that there is nothing in the art indicating that Ishino's product can not be stored or microwaved and combining Ishino with Guarino would make it more storable or microwavable, it is noted that the Examiner does not disagree that Ishino can independently be stored or microwaved. However, Guarino teaches packaging seafood in packages that are attractive, safe, fresh with the food being able to be frozen and microwaved (See Abstract and col. 1, l. 40 to col. 2, l. 17.). Many consumers like to have packages that provide further details about the packaged ingredients. The outer box structure of Guarino also has straight sides that make it easier to pack in a larger shipping box and on top of one another in a freezer without a stack falling (See FIG-2.). Therefore, it would have been obvious to place Ishino's product in a box as taught by Guarino that provides a consumer with further product information and can be handled more easily.

In response to Applicant's arguments (See p. 8, para. 2 of Applicant's Paper filed 11/4/2010.) that the combined references do not teach new claim 10 with new limitations, it is noted that further consideration and search is required to determine whether the prior art teaches this new claim.

In response to Applicant's arguments (See p. 8, para. 3 of Applicant's Paper filed 11/4/2010.) that the combined references do not teach new claim 10 with new limitations, it is noted that further consideration and search is required to determine whether the prior art teaches this new claim.

In response to Applicant's arguments (See p. 8, para. 4 of Applicant's Paper filed 11/4/2010.) regarding the teachings of Ishino, it is noted that the Examiner does not disagree with said teachings.

In response to Applicant's arguments (See p. 9, para. 2 of Applicant's Paper filed 11/4/2010.) that Ishino's bag "has a volume fewer than a volume of 0.1 times that of the sushi product", it is noted that said arguments are unclear as it is unclear what "volume fewer than" means or where Applicant gets this information from.

In response to Applicant's arguments (See p. 9, para. 3 of Applicant's Paper filed 11/4/2010.) regarding new claim 10 with the new limitations, it is noted that further consideration and search is required to determine whether the prior art teaches this new claim.

In response to Applicant's arguments (See p. 9, para. 4 of Applicant's Paper filed 11/4/2010.) regarding new claim 10 with the new limitations, it is noted that further consideration and search is required to determine whether the prior art teaches this new claim.

In response to Applicant's arguments (See p. 9, para. 5 of Applicant's Paper filed 11/4/2010.) regarding new claim 10 with the new limitations, it is noted that further consideration and search is required to determine whether the prior art teaches this new claim.

In response to Applicant's arguments (See p. 10, para. 2 of Applicant's Paper filed 11/4/2010.) that Ishino does not teach new claim 10 with the new limitations, it is noted that further consideration and search is required to determine whether the prior art teaches this new claim.

In response to Applicant's arguments (See p. 10, paras. 3-4 of Applicant's Paper filed 11/4/2010.) regarding the new teachings of new claim 10, it is noted that the Examiner concurs with said teachings.

In response to Applicant's arguments (See p. 10, paras. 5-7 of Applicant's Paper filed 11/4/2010.) that Guarino does not teach the cited limitations of new claim 10, it is noted that the Examiner concurs.

In response to Applicant's arguments (See p. 10, para. 8 of Applicant's Paper filed 11/4/2010.) that Reutimann does not the vacuum pressure per new claim 10, it is noted that the Examiner concurs.

Applicant is advised to carefully review the amendments to be sure an antecedent basis is present in the text of the Specification and new

matter has not been added and consider precisely pointing out where support is present for the amendments.

/BRENT T O'HERN/
Examiner, Art Unit 1783